IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

Chamber Summons No. 32l of 2006
in
Execution Appln no. l83 of 2004
in
Sum Suit No. l5l0 of 2002

G M Breweries Limited ... plaintiff
vs
Siddhivinayak Buildeers & anr .. defendants

Mr C.S.Kapadia with Mr O A Das for plaintiff

Mr C.S.Balsara for Divya Shah for defendants

CORAM: S.C.DHARMADHIKARI J.

DATED l8.4.2006

P.C.

. This chamber summons is taken out by the defendant- judgment debtor seeking following reliefs:

a) That the sheriff of Mumbai be ordered and directed not to proceed with the auction sale of the said immovable property being second and third floors, alongwith terrace of Nirmal Bungalow no. 42, situated at N S Road No.l0 JVPD Scheme, Vile Parle, (West) Mumbai 400049 admeasuring 2,333.75 square feet at second floor and 39l.04 sq ft at

third floor with terrace.

b) In the event of this Hon'ble court not granting reliefs in terms of prayer (a) above, the office of the sheriff of Mumbai be ordered and directed to revalue the said property and revise the upset price set out in the terms and conditions of sale for the aforesaid immovable property at a minimum of Rs.7.43 crores"

2. It is not disputed that the judgement debtor is liable to pay the decretal amount of Rs.4.03 crores pursuant to the decree passed by this court on ll.l2.2003. Further, the consent decree itself incorporates specific undertakings of the Judgement Debtor-Defendant-Applicant in this chamber summons. Two undertakings to which my attention is drawn are of making payment of the amount under the consent terms within the time limit specified by this court and not to alienate, encumber or create third party rights in the immovable properties set out in the schedule thereof. Admittedly, there is default committed in compliance with these terms. The undertakings have been breached and, therefore,this court has initiated suo-motu contempt proceedings and show cause notice is also placed alongwith the

chamber summons.

3. When this chamber summons was placed before me on l6.3.2006 a statement of the judgement debtor made through his counsel was recorded and Mr. Balsara states that now the same stands complied with inasmuch as a sum of Rs.50 lacs has been paid by the judgment debtor. Mr Kapadia appearing for the decree holder confirms this fact.

4. Mr. Kapadia invites my attention to the fact that now a sum of Rs. 2.46 crores is due and payable under the consent terms/ decree.

5. When this matter was placed before me on the last occasion I, directed the learned counsel for the judgement debtor to place on affidavit the willingness to clear the balance amount in instalment by providing specific time schedule therefor.

6. On affidavit, which is affirmed on l5.4.2006, in para 2 the following time schedule is set out:

Sr No	Date	particulars
l.	l5.5.2006	Rs.20,00,000

2.	l5.6.2006		Rs.20,00,000
3.	l5.7.2006		Rs.20,00,000
4.	l5.8.2006		Rs.20,00,000
5.	l5.9.2006		Rs.20,00,000
6.	l5.l0.2006		Rs.20,00,000
7.	l5.ll.2006		Rs.20,00,000
8.	l5.l2.2006		Rs.20,00,000
9.	l5.l.2007		Rs.20,00,000
l0.	l5.2,2007		Rs.20,00,000
ll.	l5.3.2007		Rs.20,00,000
l2.	l5.4.2007		Rs.26,00,000
		Total	Rs,2,46,00,000

Upon reading this chart it appears that the judgement debtor seeks time till April 2007 to make payment of a sum of Rs.2.46 crores and further in case the amount is not paid, the bungalow which is presently in his possession and unencumbered as well as unalienated is offered as security. He has undertaken not to create any third party right or induct any third party in any manner till the entire decretal amount is paid or orders and directions are issued by this court with regard to sale or disposal thereof. The only request made by Shri Balsara is that the valuation of the property which is presently obtained and needs to be revised in case an occasion arises to sell the bunglow.

7. Mr Kapadia submits that there are about l25 applications made by way of obstructions to the execution of the decree and several attempts to execute the decree have been frustrated and defeated. Property which belongs to the judgement debtor has not been disclosed and which is not belonging to him has been disclosed with a view to mislead this court. The properties belonging to him have changed hands several times. In such circumstances no indulgence should be shown to the judgment debtor when no interest is being charged on repeated assurances given to clear the dues expeditiously.

8. On perusal of the entire material, in my view, the time schedule given by the judgment debtor on affidavit deserves to be accepted but with a condition that in case of default committed in making payment of first instalment or any /last instalment, the Court Receiver, High Court Bombay shall stand appointed as Receiver of Nirmal Bungalow no. 42, situate at N S Road No.l0 JVPD Scheme, Vile Parle, (West) Mumbai 400049 with all powers including power to take physical possession thereof with police assistance if required and to dispose of the same either by public auction or by

private treaty. This indulgence is granted in the light of payments made till date and to give an opportunity to the Judgement Debtor to show his bnonafides. The imposition of this condition is not opposed by the Judgement Debtor. Therefore, this order meets the ends of justice.

9. The Court Receiver should seek directions in that behalf. Needless to say that if the bungalow is required to be sold it would be open for the judgment debtor to request this court to obtain fresh/revised valuation and such request would be considered on its merits in accordance with law. This order is passed in the presence of the judgment debtor.

. Chamber summons stands disposed of. Hearing of the show cause notice is deferred to 8.6.2006.